

## Accidental deaths of couples together

Where it is uncertain as to which of the two died first, S 184 Law of Property Act specifies that their deaths are, for all purposes *affecting title to property*, to be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

### *Married couples*

Assume A and B die together, and are married. A is the elder of the two. Their wills leave everything to each other, and on the second death everything to their children. Their wills say that no-one can inherit who does not survive at least 28 days. They die together in an aeroplane accident:

Event	Ownership of assets	IHT position
S 184 - A is deemed to die first	A's assets pass to children	A's estate fully taxed
B is deemed to die second	B's assets pass to children	B's estate fully taxed
<b>Effect is the same as S 4(2) IHTA; IHT cannot be charged twice on the same assets, and two nil rate bands are absorbed.</b>		

Assume the same facts, but A's will says that 28 day survival requirement is not to apply to B's inheritance from A:

Event	Ownership of assets	IHT position
S 184 still applies - A is deemed to die first	A's assets pass to B	A's estate fully exempt, spouse exemption
B is deemed to die second	B's assets (including all A's assets which have passed to B) go to children (because A did not survive B for 28 days)	B's own assets are fully taxed, but not the assets which B briefly inherited from A; S 4(2) IHTA says that, <i>for IHT purposes only</i> , A and B are deemed to have died at the same instant, so B's taxable estate cannot include anything from A
<b>Effect is that all of A's assets pass to the children, via B's estate, free from IHT. IHT is paid only on B's own assets as they pass to the children, and both nil rate bands are absorbed.</b>		

### *Unmarried couples*

Assume A and B die together, and although living together are not married. A is the elder of the two. Their wills leave everything to each other, and on the second death everything to their children. Their wills say that no-one can inherit who does not survive at least 28 days. They die together in an aeroplane accident:

Event	Ownership of assets	IHT position
S 184 - A is deemed to die first	A's assets pass to children	A's estate fully taxed
B is deemed to die second	B's assets pass to children	B's estate fully taxed
<b>Effect is the same as S 4(2) IHTA; IHT cannot be charged twice on the same assets, and two nil rate bands are absorbed.</b>		

Assume the same facts, but A's will says that 28 day survival requirement is not to apply to B's inheritance from A:

Event	Ownership of assets	IHT position
S 184 still applies - A is deemed to die first	A's assets pass to B	A's estate fully taxable
B is deemed to die second	B's assets (including all A's assets which have passed to B) go to children (A did not survive B for 28 days)	B's own assets fully taxed, but not the assets which B briefly inherited from A; S 4(2) IHTA says that, <i>for IHT purposes only</i> , A and B are deemed to have died at the same instant, so B's taxable estate cannot include anything from A
<b>Effect is no better or worse than would be without the specific survivorship device in their wills. It is usually not imported into the wills of unmarried couples, unless they express the intention to marry.</b>		

### ***Impact on other provisions in the wills of married couples***

Most survivorship clauses are restricted in their operation to matters of inheritance, i.e. the beneficial gifts under the will. They usually have no effect, where other questions (such as being an executor or trustee, or guardian for minor children) are in point.

In joint death situations, the importing of the specific provisions in the will of the elder means that, for the purposes of determining who will inherit what, the younger will be deemed to survive the elder (where relevant in interpreting the elder's will); but the elder will be deemed not to have survived the younger, where relevant in the younger's will.

Other clauses whose operation depends on the order of those deaths may not be affected, because they do not affect beneficial interests. For example, an appointment of guardians intended to take effect only on the death of the survivor will work, under both wills. But a legacy to those guardians may be affected.

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